

REMARKS

Applicant respectfully requests reconsideration of the instant application in view of the amendments, herein, and the following remarks:

The following claims are *pending*: 15, 19-24, 27-29, 32-34 and 37-41.

The following claims are *independent*: 15, 24, 29 and 34.

The following claims have previously been *cancelled* without prejudice or disclaimer: 1-14, 16-18, 25-26, 30-31 and 35-36.

Please *amend* claims 15, 24, 29 and 34; although these claims have been amended herein to provide clarification, correct typographical inaccuracies and/or informalities, and/or to better track practical/commercial implementations/practices (hereinafter “amendment,” “amendments,” and/or “amended”), Applicant submits that the originally filed claims are patentable and reserves the right to pursue the originally filed claims (as well as any claims dependent therefrom) at a later time and/or in one or more continuation/divisional application(s). Applicant submits that these claim amendments are supported throughout the originally filed specification and that no new matter has been added by way of these amendments.

Claim Rejections - 35 U.S.C. § 103

The Office Action has rejected claims 15, 19-21, 24, 27-29, 32-34 and 38-41 under 35 U.S.C. § 103(a), allegedly, as being unpatentable over Ram et al., US Patent Publication No. 2003/0004853 (hereinafter “Ram”), in view of Nakagawa, US Patent Publication No.

2002/0152153 (hereinafter “Nakagawa”) and in further view of Shields et al., U.S. Patent No. 7,529,701 (hereinafter “Shields”). The Office Action has further rejected claims 22 and 23 under 35 U.S.C. 103(a) as being unpatentable over Ram, in view of Nakagawa, in view of Shields, in view of Berckmans, U.S. Patent No. 7,529,701 (hereinafter “Berckmans”) and in further view of Official Notice.

Requirements to Establish Prima Facie Obviousness

The Supreme Court in *Graham v. John Deere Co. of Kansas City* prescribed that a *prima facie* showing of obviousness under 35 U.S.C. § 103 requires that, “the obviousness or nonobviousness of the subject matter [be] determined,” and details further requirements, commonly referred to as “Graham factors,” which include that “[1] the scope and content of the prior art [be] determined, [2] differences between the prior art and the claims at issue [be] ascertained, and [3] the level of ordinary skill in the pertinent art [be] resolved.” *Graham*, 383 U.S. at 1, 17 (1966). To comply with the Graham factors, as introduced in *Graham* and reaffirmed in *KSR Intern. Co. v. Teleflex Inc.*¹, MPEP § 706.02(j) prescribes that a rejection under 35 U.S.C. § 103 should set forth:

- (A) the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate;
- (B) the difference or differences in the claim over the applied reference(s);
- (C) the proposed modification of the applied reference(s) to arrive at the claimed subject matter; and

¹ The “[Graham] factors continue to define the inquiry.” 550 U.S. 398 (2007).

(D) an explanation as to why the claimed invention would have been obvious to one of ordinary skill in the art at the time the invention was made.

The MPEP prescribes that, “when evaluating the scope of a claim, *every limitation in the claim must be considered*,” (§ 2106 II(C), emphasis added) and, “*All words* in a claim must be considered in judging the patentability of that claim against the prior art.” (§ 2143.03, emphasis added). Applicant submits that the pending rejection has failed to consider “every limitation in the claim” and “[a]ll words in [the] claim” in judging the patentability of the claim against the prior art by mischaracterizing claim elements and/or over-generalizing the applied reference(s). As with this Office Action, when the Examiner mischaracterizes and/or provides references that are missing claimed elements, then the Examiner has failed to fulfill MPEP § 706.02(j) requirements **(A)** and **(B)**, and as a consequence, has failed to establish a *prima facie* case of obviousness. 35 U.S.C. § 103.

Missing Claim Element(s)

Applicant submits the cited references (taken alone or in combination) do not discuss, do not render obvious, and are in fact missing at least the following element(s) as recited, *inter alia*, in amended independent claim(s) 15:

A processor-implemented method for electronic trading comprising:

presenting a graphical user interface, the graphical user interface comprising:

...
a submit user control to facilitate simultaneously placing multiple option orders, wherein each option order is individually configurable as a buy or sell;

...

The Office Action asserts the previously pending claimed elements are shown in Nakagawa (abstract, Figure 2, paragraphs [0014], [0015], [0018] and [0031]) and Shields (without any specific cited portions) and alleges:

Nakagawa teaches placing the selected option orders simultaneously and a submit user control to facilitate simultaneously placing multiple orders (abstract, Figure 2, paragraphs [0014], [0015], [0018] and [0031]).

Shields teaches placing the selected option orders simultaneously and a submit user control to facilitate simultaneously placing multiple option orders (Office Action, p.5, § 5).

Applicant disagrees and submits the Office Action mischaracterized Nakagawa and Shields as applied to the previously pending claimed elements.

Instead of discussing the claimed elements as amended, Applicant submits that Nakagawa discusses *placing one order selected from a received group order collectively configured as either buy or sell for all options within the received group*. For example, Applicant notes that FIG. 2 in Nakagawa shows a single Buy/Sell entry 72 selection for the group of issues/order 71. Further, Applicant notes that Nakagawa discusses, “[u]pon receiving the group order, the order processing server 22 of the securities company’s site 20 selects the one issue whose limit price is likely to be reached . . . Then it places a limit order with the exchange’s computer 50 of the securities market” (Nakagawa, p. 3, [0032], Ins. 7-13). Furthermore, Applicant notes Nakagawa discusses regularly canceling the order and placing a new order for the most prospective issue:

... the securities company’s sites 20 regularly watches stock prices and assesses prospects concerning all specified issues even after a first limit order is placed until a limit price specified by the customer is reached. If prospects change, the securities company’s site 20 cancels the previous order and places a new limit order for

the most prospective issue with the exchange's computer 50 of the securities market. (Nakagawa, [0034]).

As such, Applicant submits that Nakagawa's single option order placement is fundamentally different from the claimed "... a submit user control to facilitate simultaneously placing multiple option orders, wherein each multiple simultaneous option order is individually configurable as a buy or sell..." as recited in amended independent claim 15.

Furthermore, Applicant notes that the Examiner has asserted Shields as allegedly discussing the previously pending claim elements but has not relied on any specific aspects or sections of Shields. MPEP § 706 recites that, "[t]he goal of examination is to clearly articulate any rejection early in the prosecution process so that the applicant has the opportunity to provide evidence of patentability and otherwise reply completely at the earliest opportunity."

Applicant also notes MPEP § 706(c)(2) states:

[i]n rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified. (MPEP § 706(c)(2)).

Applicant submits that, by not specifically explaining the alleged relevance of Shields with particularity to the claimed elements, the pending rejection has not clearly articulated the rejection and is thus improper. Despite this deficiency, Applicant submits that the pending claims are not discussed or rendered obvious by Shields.

Instead of discussing the claimed elements, Applicant submits that Shields discusses *trades involving employer-issued stocks and exercising of options on the employer-issued*

stocks, Applicant submits that Shields discussing selling of shares/exercising of stock options is fundamentally different from the claimed "... a submit user control to facilitate simultaneously placing multiple option orders, wherein each multiple simultaneous option order is individually configurable as a buy or sell..." as recited in amended independent claim 15.

Should the Examiner maintain the rejection, Applicant respectfully requests that the Examiner provide specific citations and explanations describing how each and every element of the pending claims are allegedly rendered obvious by the cited reference, providing indications of specific, alleged correspondences between claim elements and cited portions of the applied reference; more specifically, Applicant respectfully requests additional clarification as to how and specifically why the Examiner believes Nakagawa and Shields discuss and/or renders obvious the claimed "... a submit user control to facilitate simultaneously placing multiple option orders, wherein each multiple simultaneous option order is individually configurable as a buy or sell ...," as recited in independent claim 15.

Similarly, Applicant submits that Ram's GUI display for trading securities (Ram, Abstract) fails to remedy the deficiencies identified above in Nakagawa and Shields with regard to amended independent claim 15. For at least the reasons discussed above, Applicant submits that the pending rejection has mischaracterized the language of the claim element(s) and/or the applied reference(s) and, thus, has not established a *prima facie* case of obviousness. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection(s) and allowance of claim(s).

Although of different scope than amended independent claim 15, Applicant submits amended independent claim 24 is also patentable over the cited references (taken alone or in combination). For example, amended independent claim 24 recites, *inter alia*:

A computer-readable medium storing a plurality of processor-executable directives, the directives comprising instructions to:
present a graphical user interface, the graphical user interface comprising:

...
a submit user control to facilitate simultaneously placing multiple option orders, wherein each multiple simultaneous option order is individually configurable as a buy or sell;

Applicant submits at least the above noted claim elements are not discussed or rendered obvious the applied references, taken alone or in combination, for at least similar reasons as discussed above when identifying deficiencies in the Office Action's application of Nakagawa and Shields with regard to amended independent claim 15. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection(s) and allowance of claim(s).

Although of different scope than amended independent claim 15, Applicant submits amended independent claim 29 is also patentable over the cited references (taken alone or in combination). For example, amended independent claim 29 recites, *inter alia*:

An electronic trading apparatus comprising:
a processor; and
a storage device in communication with the processor and storing instructions issuable by the processor to:
present a graphical user interface, the graphical user interface comprising:
a submit user control to facilitate simultaneously placing multiple option orders, wherein each

multiple simultaneous option order is individually configurable as a buy or sell;

Applicant submits at least the above noted claim elements are not discussed or rendered obvious the applied references, taken alone or in combination, for at least similar reasons as discussed above when identifying deficiencies in the Office Action's application of Nakagawa and Shields with regard to amended independent claim 15. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection(s) and allowance of claim(s).

Although of different scope than amended independent claim 15, Applicant submits amended independent claim 34 is also patentable over the cited references (taken alone or in combination). For example, amended independent claim 34 recites, *inter alia*:

An enhanced option trading system comprising:

...

a client device in communication with the option server, the client device configured to:

present a graphical user interface, the graphical user interface comprising:

a submit user control to facilitate simultaneously placing multiple option orders, wherein each multiple simultaneous option order is individually configurable as a buy or sell;

Applicant submits at least the above noted claim elements are not discussed or rendered obvious the applied references, taken alone or in combination, for at least similar reasons as discussed above when identifying deficiencies in the Office Action's application of Nakagawa and Shields with regard to amended independent claim 15. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection and allowance of claim.

Furthermore, Applicant submits that claims 19-21, 27-28, 32-33 and 38-41, which depend directly or indirectly from independent claims 15, 24, 29 and 34 are also patentable over the applied references for at least the reasons discussed above with regard to the independent claims. Accordingly, Applicant requests reconsideration and withdrawal of this ground of rejections and allowance of the claims.

Improper Official Notice

Applicant respectfully traverses the Official Notice and requests evidentiary support for the Examiner's assertions. Applicant submits that the Examiner has asserted "it is old and well known within the art to determine a brightness level of color for ease of perception and processing of displayed information" (Office Action, p. 3, § 4) and alleged that "humans perceive different shades/brightness levels of color as separate 'colors' all together (lime green vs. hunter green, sky blue vs. navy blue, etc)" (Office Action, p. 3, § 4) but fails to support this assertion that the claimed "determining one of a plurality of brightness levels of a color wherein a level of brightness is based on a difference between a strike price of an option quote and a price of a security underlying the presented option quote ... presenting the option quote in association with the one of a plurality of brightness levels_[and] presenting the option quote in association with the color" would have been well known in relation to the other elements of the claims and within the context of the claims as a whole to one of ordinary skill in the art at the time the invention was made.

To properly support such an assertion, the Examiner must: (a) provide evidentiary support (MPEP § 2141 (II)(C) states, "Any obviousness rejection should include, either explicitly or implicitly in view of the prior art applied, an indication of the level of ordinary

skill."); (b) establish the appropriate indication of ordinary skill in the art (MPEP § 2141 (II)(C) states, "Any obviousness rejection should include, either explicitly or implicitly in view of the prior art applied, an indication of the level of ordinary skill."); and (c) provide an objective rationale for modifying and/or using the applied references and/or the official notice (MPEP §2141 (III) states, *inter alia*, "The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious,"), making all such assessments without impermissible hindsight, picking and choosing, mischaracterizations and over-generalizations.

(a). Evidentiary Support. Applicant submits that the Examiner fails to provide explicit evidentiary support as to why the relevant claim elements of the noted claims would be allegedly old and well known to one of ordinary skill in the art at the time the invention was made. Per MPEP § 2144.03.A, "[i]t would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known" (emphasis original). Applicant respectfully submits that the Examiner fails to provide explicit evidentiary support as to why "... presenting the option quote in association with the one of a plurality of brightness levels ..." would be allegedly obvious to one of ordinary skill in the art at the time the invention was made, as required by the MPEP.

(b). Indication of the level of ordinary skill. In addition to the aforementioned lack of evidentiary support, Applicant further submits that impermissible hindsight has been applied in asserting obviousness of the various claim elements without citing prior art or providing an indication of the level of ordinary skill. MPEP § 2141 (II)(C) states, "Any obviousness

rejection should include, either explicitly or implicitly in view of the prior art applied, an indication of the level of ordinary skill.” The pending rejection asserts “ it is old and well known within the art ...” (see, Office Action, p. 7, § 6) but has provided no indication or discussion of which art is described or the level of ordinary skill associated therewith. The rejection’s reference to “the art” is overly general and, consequently, does not provide a specific indication of the level of ordinary skill pertinent to the claimed subject matter. MPEP § 2141.03 (III) states, “The importance of resolving the level of ordinary skill in the art lies in the necessity of maintaining objectivity in the obviousness inquiry.” Applicant is unclear as to what exactly the Examiner is alleging with regard to the level of ordinary skill and, thus, are not in a position to provide a complete reply that is most suited to addressing the Examiner’s concerns. As no indication of the level of ordinary skill has been provided, Applicant submits that the rejection applies impermissible hindsight and has not made a *prima facie* showing of obviousness. Should the Examiner maintain the rejection and/or the Official Notice, Applicant respectfully requests that he identify the pertinent art, discuss the level of ordinary skill alleged to be associated therewith at the time of the invention, and clarify why he believes the claimed subject matter would have been obvious to one possessing that level of skill.

(c). Objective Rationale. Applicant submits that the pending Official Notices have not provided sufficient objective rationale for modifying the applied references. By way of example only, Applicant notes that the pending rejection alleges, “it would have been obvious to one skilled in the art ... to modify the color based financial visual data of the combination of Ram and Berckmans to include a plurality of brightness levels of color to add a complexity of perceptible information available visually” (Office Action, p. 7, § 6). Applicant respectfully

submits that the alleged rationales for the proposed modifications of the applied references provided here and throughout the pending rejection are overly general, which do not point beyond Ram and Berchmans to a modification of itself or a combination with the allegedly obvious “plurality of brightness levels of color.” Applicant is unclear how the Examiner believes it is obvious to one of ordinary skill in the art to modify the general alleged utility stated in Ram and Berchmans merely to “add a complexity of perceptible information available visually.” (Emphasis added). Applicant submits that merely citing an alleged utility of a reference’s own system, without providing any attendant explanation or articulation of how that alleged utility points beyond the reference to the modifications of the references proposed in the pending rejection, is insufficient to support an assertion of obviousness under 35 U.S.C. § 103. MPEP §2141 (III) states, *inter alia*, “The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious,” and that, “there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” Applicant submits that, by merely quoting alleged rationales of the applied references, the pending rejection has failed to provide a “clear articulation of the reason(s)” or an “articulated reasoning with some rational underpinning” for the proposed modifications of the references. Applicant further requests that the Examiner clarify exactly why he believes the specific modifications, taken in relation to the claims as wholes, would allegedly have been obvious to one of ordinary skill in the art at the time the invention was made.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of the Official Notices (and rejection(s) based thereupon) and allowance of claim 22 and 23.

CONCLUSION

Applicant asserts that the above remarks, which distinguish the claims over the cited reference(s), pertained only to noted claim element portions. These remarks are believed to be sufficient to overcome the prior art to this Office Action (and/or any previous office action(s)) (hereinafter “Office Action(s)”). While many other claim elements and/or bases for rejection were not discussed, as they have been rendered moot based on the above amendments and/or remarks, Applicant asserts that all such remaining and not discussed claim elements and/or bases for rejection, all, also are distinguished over the prior art, and Applicant reserves the opportunity to more particularly traverse, remark and/or distinguish over any such remaining claim elements and/or bases for rejection at a later time, should it become necessary. Further, any remarks that were made in response to the Office Action(s)’ objection and/or rejection as to any one claim element, and which may have been re-asserted as applying to other Office Action(s) objection(s) and/or rejection(s) as to any other claim element(s), any such re-assertion(s) of remarks are not meant to imply that there is commonality about the structure, functionality, means, operation, and/or scope of any of the claim element(s), and no such commonality is admitted as a consequence of any such re-assertion(s) of remarks. Consequently, the reference(s) cited the Office Action(s) do not result in the claimed invention(s), there was/is no motivation, basis and/or rationale for such a combination of references (i.e., cited references do not teach, read on, suggest, or result in the claimed invention(s)), and the claimed invention(s) are not admitted to be prior art. Also, Applicant does not accept, admit, and/or concede to any assertions, (mis)characterizations (e.g., of claims, references, and/or otherwise), and/or Official Notice(s) in the Office

Action(s). As such, Applicant does not concede that any claim element(s) have been anticipated and/or rendered obvious by any of the cited reference(s) and/or any Official Notice in the Office Action(s). Thus, the Applicant respectfully submits that the supporting remarks and claimed inventions, claims 15, 19-24, 27-29, 32-34 and 37-41, all: overcome all rejections and/or objections as noted in the Office Action(s), are patentable over and discriminated from the cited reference(s), and are in a condition for allowance. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection(s) and/or objection(s), and allowance of all claims.

Authorization

Applicant hereby authorizes and requests that the Commissioner charge any additional fees that may be required for consideration of this and/or any accompanying and/or necessary papers to Deposit Account No. 03-1240, Order No. 17209-345. In the event that an extension of time is required (or which may be required in addition to that requested in a petition for an extension of time), Applicant requests that the Commissioner grant a petition for an extension of time required to make this response timely, and, Applicant hereby authorizes and requests that the Commissioner charge any fee or credit any overpayment for such an extension of time to Deposit Account No. 03-1240, Order No. 17209-345.

In the event that a telephone conference would facilitate examination of the application in any way, Applicant invites the Examiner to contact the undersigned at the number provided.

Respectfully submitted,
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